Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Winstar Communications, LLC	)	WC Docket No. 02-80
Emergency Petition for Declaratory Ruling	)	
Regarding ILEC Obligations to	)	
Continue Providing Services	)	
	)	
Verizon Petition for Declaratory Ruling Regarding	)	
CLEC Obligations to Cure Assigned Indebtedness	)	

REPLY COMMENTS OF VERIZON

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INTRODUCTION AND SUMMARY

Verizon submits this reply in support of its comments and its counter-petition for declaratory ruling. The record in this proceeding confirms that the Commission should promptly grant Verizon's counter-petition, and should correspondingly deny the petition filed by IDT Winstar, LLC ("IDT"). This matter clearly warrants the Commission's speedy action. The issues presented are important to telecommunications service providers, have arisen in the past, and, absent a grant of the counter-petition, are likely to continue to arise in other bankruptcies where the industry as a whole (local and long distance carriers alike) has literally hundreds of millions of dollars in outstanding indebtedness on existing service arrangements at issue.

1/ The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are: Contel of the South, Inc. d/b/a Verizon Mid-States; GTE Midwest Incorporated d/b/a Verizon Midwest; GTE Southwest Incorporated d/b/a Verizon Southwest; The Micronesian Telecommunications Corporation; Verizon California Inc.; Verizon Delaware Inc.; Verizon Florida Inc.; Verizon Hawaii Inc.; Verizon Maryland Inc.; Verizon New England Inc.; Verizon New Jersey Inc.; Verizon New York Inc.; Verizon North Inc.; Verizon Northwest Inc.; Verizon Pennsylvania Inc.; Verizon South Inc.; Verizon Virginia Inc.; Verizon Washington, DC Inc.; Verizon West Coast Inc.; Verizon West Virginia Inc.

Consequently, the declaratory rulings requested by Verizon involve policies that would have considerable impact on the economic well being of many carriers, both local and long distance, that serve as carriers' carriers. Those rulings are likewise necessary to prevent less scrupulous carriers from using customers as pawns in schemes to avoid their obligations under bankruptcy law and the governing interstate tariffs.

As noted in Verizon's opening comments, Winstar's creditors include both ILECs and interexchange carriers: Advanced Fibre Communications, AT&T Corp., BellSouth, CIT, e.spire Communications, Heitman/SV Atlanta, MCI WorldCom, Qwest, SBC, Sprint Communications Co., Univance Telecommunications, Velocita, Verizon, and Williams Communications. IDT's future operations presumably will use the wholesale services of these carriers. And IDT's demand — purportedly based on provisions of Title II applying to all carriers — that carriers transfer service arrangements by merely changing the name on the wholesale carrier's bill from "Winstar" to "IDT," would trump the Bankruptcy Code and applicable tariff and contract provisions on assignment for all such carriers. The Commission should not sanction the efforts of IDT or other purchasers of bankrupt CLECs, pursuant to nonexistent requirements of the Communications Act, to void the policies of the Bankruptcy Code and deprive carriers as a class of cure payments of potentially millions of dollars.[2/]

The General Services Administration ("GSA"), as an end-user, understandably seeks to ensure that Winstar's bankruptcy will not result in an interruption of the services provided to federal agencies. The best way to protect customers such as GSA is to grant Verizon's counter-

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[2/] In a press release issued upon the Bankruptcy Court's approval of the sale, IDT's chairman crowed that "this is an incredible deal. It might not top the Dutch settlers buying the Island of Manhattan for twenty four dollars, but it comes pretty close." http://www.idt.net/idtwhats_doc/1201/12-20-01html. IDT now is seeking to enrich itself further by avoiding its cure obligations.

petition, not Winstar's petition. The Commission should clarify that there is no "telecom" exception from the Bankruptcy Code, declare that a CLEC seeking to take over another CLEC's service arrangements by mere name change is an assignee under Verizon's interstate tariffs, and clarify its existing requirements for when a carrier in bankruptcy must provide notice to customers of the possibility of a transfer or discontinuance of service. Such a declaratory ruling should impel bankrupt carriers and their purchasers to act responsibly and make appropriate arrangements to protect the interests of their customers, instead of relying on brinksmanship and manufactured service "emergencies."

Finally, the Commission should give no weight to the comments of Cavalier Telephone, LLC ("Cavalier"). Like IDT in its petition, Cavalier in its comments plays fast and loose with the facts, and it does so for the same reason: in the Net2000 bankruptcy, Cavalier has pursued an end run around both the Bankruptcy Code and the interstate tariffs under which Verizon and other carriers offer service. Like IDT, Cavalier led its own customers and Verizon to believe that Cavalier would cause Net2000 to assume and assign Net2000's special access service arrangements with Verizon. Then, at the last moment, Cavalier disclosed that it would nominally reject all of Net2000's service arrangements with Verizon yet demand that Verizon provide Cavalier the same circuits under the Net2000 service arrangements by simply changing the name on the bill from "Net2000" to "Cavalier." In short, just like IDT, Cavalier gamed the system to get *special* treatment not permitted by the Bankruptcy Code or Verizon's tariffs. Its comments here only reinforce the need for the Commission to set clear policy to discourage such conduct.

I. THE COMMISSION SHOULD ADDRESS GSA'S CONCERNS BY GRANTING VERIZON'S COUNTER-PETITION.

GSA expresses concern that the transfer of underlying service arrangements from Winstar to IDT may result in the interruption in service to federal agencies. The Commission can and should put that concern to rest by promptly granting Verizon's counter-petition for declaratory ruling. If GSA and other end users face uncertainty, it is because IDT, Cavalier, and potentially other purchasers of bankrupt CLECs have sought to game the regulatory system in an effort to obtain all of the rights of an assignee of service arrangements without the accompanying obligation to pay a cure. And they have used customers as a bargaining chip in furtherance of that scheme, without providing appropriate notice to those customers. The declarations sought in Verizon's counter-petition would eliminate that uncertainty.

First, Verizon asks the Commission to rule that "the Communications Act does *not* except carriers from the rights afforded by section 365 of the Bankruptcy Code."[3/] There should be no doubt about this. But IDT and others have claimed in bankruptcy proceedings that the Communications Act entitles a purchasing CLEC to continue the use of a bankrupt's service arrangements without an assumption and assignment, *and on the basis of that false premise have managed to forestall a clear resolution of their obligations under section 365.*[4/] It is critical that the Commission clarify for the bankruptcy courts and parties to bankruptcy proceedings that such claims have no merit whatever.

Second, the Commission should declare that, "where one CLEC wishes to take over another's special access service arrangement with nothing more than a name change, that

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3/ Comments and Counter-Petition of Verizon (filed April 29, 2002), at 26.

4/ *See In re Winstar Communications, Inc., et al.*, Bankr. D. Del., Case No. 01-01430 (JJF), Transcript of Hearing held April 15, 2002, at 12-13.

constitutes 'an assignment or transfer' within the meaning of Verizon's federal access tariffs, so that the assignee must assume the outstanding indebtedness of the prior CLEC for such services."[5/] The terms of Verizon's federal tariff plainly compel this ruling. Section 2.1.2 of Verizon's Tariff F.C.C. No. 1 provides that, where no relocation or interruption of services occurs, an assignment or transfer of services may be made to:

> (1) another customer . . ., provided the assignee or transferee assumes all outstanding indebtedness for such services, and the unexpired portion of the minimum period and the termination liability applicable to such services, if any; or
>
> (2) a court-appointed receiver, trustee or other person acting pursuant to law in bankruptcy . . ., provided the assignee or transferee assumes the unexpired portion of the minimum period and the termination liability applicable to such services, if any.

§ 2.1.2(A). The tariff further provides that "[t]he assignment or transfer of services does not relieve or discharge the assignor or transferor from remaining jointly or severally liable with the assignee or transferee for any obligations existing at the time of the assignment or transfer." *Id.*

Here, to the extent that IDT now claims to have rejected Winstar's existing service arrangements, those arrangements are not part of what it purchased in the bankruptcy proceedings. Nonetheless, IDT continues to demand that those service arrangements be transferred to it by a mere name change on Verizon's bill.[6/] If there is only a name change, there

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[5/] Comments and Counter-Petition of Verizon (filed April 29, 2002), at 26.

[6/] The second subsection does not apply here to the extent that IDT claims to have rejected the existing service arrangements in the bankruptcy proceedings. That is so because that provision applies only to "a court-appointed receiver, trustee, or other person acting pursuant to law in bankruptcy." That provision applies where a company declares bankruptcy or converts to a Chapter 7 liquidation and the debtor-in-possession, trustee, or other, similar entity assumes control of the bankrupt entity by operation of the Bankruptcy Code, in which case it may assume or reject executory contracts and unexpired leases (such as the service arrangements at issue here) under section 365 of the Bankruptcy Code. If it opts for assumption, of course, the service provider has a right to the cure of any prior indebtedness under section 365 itself.

will be "no relocation or interruption of services." And the purchasing CLEC is "another customer" within the meaning of subsection 2.1.2(A)(1). Thus, the tariff permits "an assignment or transfer" of the service arrangement only if the "assignee or transferee" — i.e., the purchasing CLEC, IDT — "assumes all outstanding indebtedness for such services, and the unexpired portion of the minimum period and the termination liability applicable to such services, if any." *Id.*

If purchasing CLECs such as IDT and Cavalier (as we discuss below) were clearly on notice that a "name change" transfer necessarily required an "assignment or transfer" under Verizon's tariff, they should not be tempted to try to game the system by trying to secure such transfers *without* taking an assignment subject to the conditions of the tariff. GSA and other end users then could be confident not only that the purchasing CLEC could and would provide uninterrupted service. (Of course, it is already the case that IDT *can* provide GSA the uninterrupted transition it seeks simply by taking an assignment;[7/] the declaration Verizon requests would ensure that IDT in fact *would* do so if IDT were going to continue to provide service to federal agencies using the same service arrangements as Winstar.)

Moreover, such a declaration would be consonant with the requirements of the Bankruptcy Code. As discussed more fully in Verizon's comments, just as an assignee or transferee under Verizon's tariffs must assume the outstanding indebtedness on a service arrangement, so section 365 of the Bankruptcy Act requires a debtor or trustee to cure any defaults before assuming, or assuming and assigning, any executory contract. 11 U.S.C. § 365(b)(1)(A).

7/ IDT has sought to bury that fact in its petition.

Third, the interests of GSA and other end users would be further served by the Commission's clarification — to the extent that the Commission does not separately clarify this further aspect of the problem — of the circumstances that trigger the requirement to provide information to customers of a possible impairment of service under 47 C.F.R. 63.71.[8/] When a carrier files in Chapter 11 and initiates an auction of its assets, the carrier certainly should have to inform customers of a possible discontinuation or transfer of service. Unlike other Chapter 11 petitioners, who may truly expect to reorganize and continue operations, and thereby avoid any serious risk of service disruption, a carrier that demonstrates an intent to sell its assets or put them up for auction knows that at least a minimal disruption or transfer of service is possible and imminent. Similarly, upon filing a motion for sale or acceptance of a purchase agreement, a carrier should be required simultaneously to inform its customers that it will cease or transfer operations upon completion of the sale. Plainly, a carrier should have to take the same step when it converts from a Chapter 11 bankruptcy to one under Chapter 7. As explained in Verizon's opening comments, other carriers have provided notice to their customers under similar circumstances without adverse effect.

Indeed, in this case, if GSA is uncertain about whether IDT will provide the services subject to the Winstar-GSA contracts, that is as much a result of IDT's continuing brinksmanship as anything else. It was not until April 18 that IDT finally asked the Bankruptcy Court to approve Winstar's assumption of the Metropolitan Area Acquisition (MAA) program agreements

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8/ As noted in Verizon's opening comments, the Commission may provide such clarification by means of a public notice, as it did in the case of "Requirements for Carriers to Obtain Authority Before Discontinuing Service in Emergencies," Public Notice, DA 01-1257 (rel. May 22, 2001).

with GSA and to assign those agreements to IDT. The Bankruptcy Court has not yet acted on that request.

Finally, Verizon has no interest in summarily discontinuing service in a manner that leaves customers unserved. Verizon's tariff provides a mechanism for purchasing CLECs to ensure seamless transition. It is only where, as IDT has done in this case, the purchasing CLEC waits until the last moment to provide notice to customers or to seek new service arrangements that the specter of service disruption is raised. Thus, it is IDT that risks inconveniencing its own customers. Even then, Verizon will do what it can to avoid disruption to those customers that choose to do business with IDT.

II. THE COMMISSION SHOULD GIVE NO CREDENCE TO CAVALIER'S MISLEADING COMMENTS.

Cavalier's comments are more remarkable for what they omit than what they state. Cavalier fails to disclose that it, like IDT, has tried to do an end run around section 365 of the Bankruptcy Code and the tariffs under which Verizon offers service. By filing comments in support of IDT's "emergency" petition, Cavalier hopes to ride on IDT's coattails in pursuing this objective: Cavalier hopes to benefit from the special access arrangements that Verizon provided to Net2000 without curing Net2000's defaults. In executing its strategy, Cavalier has repeatedly misstated or omitted critical facts in its communications with Verizon, the Bankruptcy Court and state regulatory agencies, and now this Commission.

Thus, far from adding weight to IDT's petition, Cavalier's comments make even clearer the importance of the Commission's denial of that petition and its grant of Verizon's counter-petition. Cavalier's comments — and its disregard of the facts of the Net2000 matter — serve as a reminder that, while most carriers have complied with their obligations under the Bankruptcy Code and Verizon's tariffs to cure any prior indebtedness when they assume existing service

arrangements, the tactics employed by IDT are likely to be used again if IDT succeeds in evading its obligations here. And this industry as a whole — long distance and local carriers alike — has literally hundreds of millions of dollars of outstanding indebtedness on existing service arrangements at issue in ongoing bankruptcy proceedings across the country.

A. Like IDT, Cavalier Seeks an Assignment without Accepting Liability for a Bankrupt CLEC's Indebtedness.

Mirroring the position that IDT takes vis-à-vis Winstar, Cavalier has purchased the assets of Net2000, a bankrupt CLEC having special access service arrangements with Verizon.[9/] In mid-November 2001, Net2000 and Cavalier jointly presented a pre-packaged bankruptcy and sale to the bankruptcy court: on November 15, the two companies entered into an asset purchase agreement; the very next day, Net2000 filed for Chapter 11 bankruptcy; and on November 19th, Net2000 filed a motion to sell substantially all of its assets to Cavalier ("Sale Motion").[10/]

Over the next month, all the evidence indicated that Net2000 would assume its service arrangements and assign them to Cavalier. Just as IDT initially acknowledged its obligation to cure contracts it assumed, Cavalier and Net2000 suggested that the Verizon service arrangements would be transferred to Cavalier and a cure would be paid.[11/] Their Sale Motion stated that Net2000's business would be sold as a "going concern," implying that Cavalier would continue to use the services and facilities provided under the Verizon service arrangements in order to

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[5/] *See In re Net2000 Communications, Inc.*, Bankr. D. Del., Case No. 01-11324-11334, Chapter 11 ("*In re Net2000*"), Transcript of Hearing held February 5, 2002 (generally describing Net2000's service arrangements with Verizon).

[10/] *See In re Net2000*, Motion for an Order (filed Nov. 19, 2001).

[11/] Comments and Counter-Petition of Verizon (filed April 29, 2002), at 5.

provide uninterrupted service.[12/] Net2000's application to the Commission to discontinue service said that Cavalier would acquire "substantially all the assets of Net2000 used in providing telecommunications services, including all of its customer accounts."[13/] Net2000's letters to each of its customers said that its "current telephone number and account will be migrated to Cavalier and the process will be seamless."[14/] Consistent with all of these steps, nearly a month after the asset purchase agreement had been struck, Net2000 sent Verizon a cure notice stating that they believed they owed Verizon $5,096,592 under the Verizon service arrangements.

Despite these various assurances, Cavalier and Net2000 suddenly reversed their position at hearings before the Bankruptcy Court on December 20 and December 27, 2001. Net2000 stated that it would not assume and assign the Verizon service arrangements to Cavalier. At the December 27 hearing, Net2000 further said that it was not asking for Verizon facilities and services to be made available to Cavalier after the closing of the sale.[15/]

12/ *In re Net2000*, Motion for an Order, at 4-5. *See also* Declaration of Donald Clarke in Support of First Day Relief (Nov. 16, 2001) (the "Clarke Declaration"), which was submitted in support of the Sale Motion. The Clarke Declaration reiterates that the business would be sold as a going concern: "the Debtors in the sound exercise of their business judgment, and after analyzing potential 'stand-alone' restructuring alternatives, have determined that a sale of all or substantially all of their assets as a going concern is in the best interest of their estates and creditors." Clarke Declaration, at 20.

13/ Section 63.71 Application, *For Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, To Discontinue the Provision of Telecommunications Services by a Domestic Carrier*, filed with the FCC (Dec. 6, 2001), at 1.

14/ Notices to Net2000 Customers (Nov. 29, 2001 and Dec. 17, 2001).

15/ *In re Net2000*, Transcript of Hearing held Dec. 27, 2001, at 19-20.

After Net2000 and Cavalier closed, however, Cavalier made clear that it was stepping into the shoes of Net2000 *with no more than a name change.*[16] Thus, in a letter sent from Cavalier's counsel, Cavalier asked that Verizon begin billing Cavalier for the services previously provided to Net2000.[17] Net2000 had not discontinued service, nor had Cavalier submitted any new Access Service Requests or Local Service Requests. Cavalier simply continued to use many of the services and facilities Verizon had provided to Net2000.[18]

In short, IDT's actions more recently in the *Winstar* bankruptcy are a virtual clone of Cavalier-Net2000. One important difference, however, is that IDT has initiated a proceeding that affords the Commission an opportunity to clarify what the Communications Act and Commission policy require in circumstances such as those in the *Winstar* and *Net2000* bankruptcies. The Commission should seize that opportunity now, and use it to grant Verizon's counter-petition for declaratory ruling.

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[16] Testimony from the Evidentiary Hearing on Verizon's Emergency Motion further demonstrated that Cavalier was using Verizon services and facilities. At this hearing, Matt Ashenden, Cavalier's Director of Engineering, testified that Cavalier continued to use the services and facilities provided under the Verizon Agreements. *See In re Net2000*, Transcript of Hearing held February 8, 2002, at 73.

[17] *See* Letter from Donald J. Detweiler, Saci Ewing Attorneys at Law, to Darryl S. Laddin, Arnall Golden Gregory LLP, re: Transfer of Assets to Cavalier Telephone Company (Jan. 16, 2002).

[18] When Cavalier's game plan became clear, Verizon asked the Bankruptcy Court to recognize that Cavalier had in fact received the benefit of an assumption and assignment under section 365 of the Bankruptcy Code, and that Cavalier was accordingly required to cure Net2000's indebtedness on the special access arrangements involved. *See In re Net2000*, Emergency Motion of the Operating Subsidiaries of Verizon Communications Inc. to Require Debtors and Cavalier Telephone Company to Cure Defaults under the Debtors' Contracts with Verizon and for Contempt (filed Jan. 18, 2002). The bankruptcy court denied Verizon's cure request, and this matter is currently on appeal.

B. Cavalier's Suggestion That Verizon Treated the Net2000 Transaction Differently from Other Deals is Simply False.

There is no more truth to Cavalier's assertion that Verizon afforded disparate treatment to Cavalier's various transactions than there is to IDT's similar claim. In the first place, Cavalier's effort to contrast Verizon's actions in the Net2000 case with those concerning other deals are meritless. Cavalier claims that Verizon accommodated the transfer of customers "when Cavalier had acquired customers from other carriers such as Conectiv Communications, Inc. and Broadstreet Communications," and asserts that Verizon did not in the case of Net2000. But in contrast to both Cavalier's tactic in *Net2000* and IDT's in *Winstar*, Cavalier expressly accepted assignment of some of Conectiv's service arrangements under the Verizon interconnection agreements and tariffs.[19/] And the dissolution of Broadstreet did not involve an asset sale so far as Verizon is aware; Broadstreet simply shut its doors and told its customers to find new service providers.[20] Indeed, as Qwest underscored in its comments, the assignment of contracts to purchasing carriers is the *rule*, not the exception. The purchase by MCI WorldCom of the assets of Rhythms Netconnections Inc., and AT&T's purchase of Northpoint Communication Group, Inc.'s assets, demonstrate that similarly situated companies have complied with the Bankruptcy

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19/ *See* Letter from Jeffrey A. Masoner, Verizon, to Michael D. Croce, Conectiv, and Martin, W. Clift, Cavalier (September 27, 2001) ("Cavalier agrees that it shall be liable for any and all obligations under the Interconnection Agreement, whether incurred before, on or after the date of the assignment thereof, regardless of whether incurred by Conectiv or Cavalier") (agreement executed by Mr. Clift of Cavalier).

20 Neither Conectiv nor Broadstreet sought bankruptcy protection, and so neither involved the application of section 365 of the Bankruptcy Code.

Code, and have taken assignment of and cured existing contracts.[21] These examples highlight that what IDT is seeking (and what Cavalier has tried to obtain) is special treatment.

C. Cavalier's Comments Are No More Credible Than Its Past Statements to the Bankruptcy Court and State Agencies.

Cavalier's efforts to skirt the relevant facts here are reminiscent of its past dealings with the Bankruptcy Court and state regulators, which have been similarly tainted. For this reason, too, the Commission should accord little weight to any of Cavalier's representations.

Cavalier repeatedly danced close to and over the line in the *Net2000* case. For example, on the closing date of the sale, Cavalier sent a letter to the public service commissions of Maryland and the District of Columbia, stating that the Bankruptcy Court had approved the sale and had "ordered all parties, including Verizon, to due [sic] all things necessary to transfer [Net 2000's] customers to Cavalier effective on the date of closing."[22] The statement was false. The only mention of Verizon in the Sale Order was a provision stating that the Verizon agreements were *not* being assumed and assigned to Cavalier.[23] As a result, the Bankruptcy Court ordered Cavalier to send letters of retraction to the state commissions.[24]

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[21] Comments of Qwest Corporation in Response to the Emergency Petition for Declaratory Ruling of Winstar Communications, LLC (filed April 29, 2002), at 13.

[22] *See* Letters from Martin W. Clift, Jr., Cavalier Telephone, LLC, to the Maryland and the District of Columbia, Public Service Commissions (Jan. 14, 2002).

[23] *See In re Net2000*, Order Under 11 U.S.C. §§ 105(a), 363(b), (f) and (m), 365(a) and 1146(c), and Fed. R. Bankr. P. 2002 and 6004: (A) Approving Purchase Agreement Between the Debtors and Cavalier East, L.L.C.; (B) Authorizing Sale of Assets Free and Clear of All Liens, Claims and Encumbrances; (C) Authorizing the Assumption and Assignment of Certain Executory Contracts and (D) Granting Related Relief, at 11.

[24] *In re Net2000*, Transcript of Hearing held Jan. 18, 2002, at 17-18.

Later, in a letter to Ivan Seidenberg, President and Co-CEO of Verizon, Brad Evans, President and CEO of Cavalier, claimed that Cavalier had obtained the right to become the primary carrier of Net2000's customers pursuant to a "Master Services Agreement" (MSA), which Evans claimed had been filed with the Bankruptcy Court.[25/] Mr. Evans sent copies of the letter to three state regulatory commissions, claiming a service emergency and requesting that the commissions prevent Verizon from disconnecting any former Net2000 customers without Cavalier's approval and require Verizon to migrate Net2000 circuits to Cavalier's network. Mr. Evans's statements regarding the MSA were false. The MSA had been neither filed with, nor approved by, the Bankruptcy Court.[26/] In a subsequent deposition, Mr. Evans admitted that he knew when he sent the letter that the MSA had not been filed.[27/] As a result of these and other incidents, Verizon moved before the Bankruptcy Court for an order holding Cavalier in contempt.[28/] The court held a hearing and has the motion under consideration. Whatever the outcome of that motion, the Commission has no reason to give any credence to Cavalier's claims here.

25/ *See* Letter from Brad A. Evans, Cavalier Telephone, to Ivan Seidenberg, Verizon Communications (Jan. 14, 2002).

26/ The fact that the MSA was never filed with or approved by the Bankruptcy Court further exposes the falsity of Cavalier's assertion in its comments (at 2) that Verizon improperly blocked Cavalier from transferring customers from Net2000 in December 2001. Cavalier's CEO, Brad Evans, admitted that, without the MSA, Cavalier could not place orders and transition Net2000's customers onto Cavalier's network until after closing of the sale. *In re Net2000*, Transcript of Hearing held February 8, 2002, at 111. The Bankruptcy Court agreed with Verizon that, because the MSA had never been filed or approved, Cavalier could not, therefore, transition Net2000's customers. *Id* at 138-39.

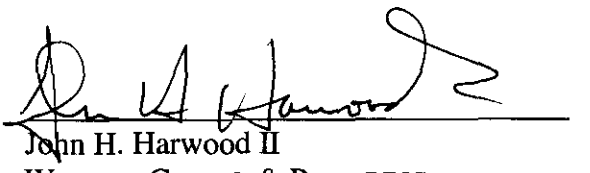
27/ *See In re Net2000*, Deposition Transcript of Brad Evans (Feb. 1, 2002) at 45-46, 69-70.

28/ *See In re Net2000*, Memorandum of the Operating Subsidiaries of Verizon Communications Inc. in Support of the Motion for Contempt Against the Debtors and Cavalier East L.L.C. (February 15, 2002).

CONCLUSION

For the foregoing reasons, Verizon respectfully requests that the Commission reject IDT Winstar's petition for declaratory ruling, and that the Commission grant Verizon's counter-petition for Declaratory Ruling.

Respectfully submitted,



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May 3, 2002

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